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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN JOSE DIVISION

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14 SECURITIES AND EXCHANGE
COMMISSION,

15 Plaintiff,

16 vs.

17 MAYANK GUPTA and
18 PUSHPENDRA AGRAWAL,

19 Defendants.

Case No. 5:17-cv-05274-SVK

**FINAL JUDGMENT AS TO
DEFENDANT MAYANK GUPTA**

1 The Securities and Exchange Commission having filed a Complaint and
2 Defendant Mayank Gupta, having entered a general appearance; consented to the
3 Court's jurisdiction over Defendant Gupta and the subject matter of this action;
4 consented to entry of this Final Judgment without admitting or denying the
5 allegations of the Complaint (except as to jurisdiction and except as otherwise
6 provided herein in paragraph VI); waived findings of fact and conclusions of law; and
7 waived any right to appeal from this Final Judgment:

8 **I.**

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant
10 Gupta is permanently restrained and enjoined from violating, directly or indirectly,
11 Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15
12 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by
13 using any means or instrumentality of interstate commerce, or of the mails, or of any
14 facility of any national securities exchange, in connection with the purchase or sale of
15 any security:

- 16 (a) to employ any device, scheme, or artifice to defraud;
17 (b) to make any untrue statement of a material fact or to omit to state
18 a material fact necessary in order to make the statements made, in
19 the light of the circumstances under which they were made, not
20 misleading; or
21 (c) to engage in any act, practice, or course of business which
22 operates or would operate as a fraud or deceit upon any person.

23 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as
24 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also
25 binds the following who receive actual notice of this Final Judgment by personal
26 service or otherwise: (a) Defendant Gupta's officers, agents, servants, employees,
27 and attorneys; and (b) other persons in active concert or participation with Defendant
28 Gupta or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Gupta is permanently restrained and enjoined from violating, directly or indirectly, Section 14(e) of the Exchange Act [15 U.S.C. §78n(e)] and Rule 14e-3 promulgated thereunder [17 C.F.R. §240.13e-5], in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant Gupta knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person of such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or
- (b) communicating material, nonpublic information relating to a tender offer, which Defendant Gupta knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person of such issuer, to any person

1 under circumstances in which it is reasonably foreseeable that
2 such communication is likely to result in the purchase or sale of
3 securities in the manner described in subparagraph (a) above,
4 except that this paragraph shall not apply to a communication
5 made in good faith

6 (i) to the officers, directors, partners or employees of the
7 offering person, to its advisors or to other persons, involved
8 in the planning, financing, preparation or execution of such
9 tender offer;

10 (ii) to the issuer whose securities are sought or to be sought by
11 such tender offer, to its officers, directors, partners,
12 employees or advisors or to other persons involved in the
13 planning, financing, preparation or execution of the
14 activities of the issuer with respect to such tender offer; or

15 (iii) to any person pursuant to a requirement of any statute or
16 rule or regulation promulgated thereunder.

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as
18 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also
19 binds the following who receive actual notice of this Final Judgment by personal
20 service or otherwise: (a) Defendant Gupta's officers, agents, servants, employees,
21 and attorneys; and (b) other persons in active concert or participation with Defendant
22 Gupta or with anyone described in (a).

23 **III.**

24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
25 Gupta shall pay a civil penalty in the amount of \$23,785.40 to the Securities and
26 Exchange Commission pursuant to Section 21A of the Exchange Act, [15 U.S.C.
27 §78tu-1]. Defendant Gupta shall make this payment within 14 days after entry of this
28 Final Judgment.

1 Defendant Gupta may transmit payment electronically to the Commission,
2 which will provide detailed ACH transfer/Fedwire instructions upon request.
3 Payment may also be made directly from a bank account via Pay.gov through the
4 SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant Gupta may
5 also pay by certified check, bank cashier's check, or United States postal money
6 order payable to the Securities and Exchange Commission, which shall be delivered
7 or mailed to

8 Enterprise Services Center
9 Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169
10

11 and shall be accompanied by a letter identifying the case title, civil action number,
12 and name of this Court; Mayank Gupta as a defendant in this action; and specifying
13 that payment is made pursuant to this Final Judgment.

14 Defendant Gupta shall simultaneously transmit photocopies of evidence of
15 payment and case identifying information to the Commission's counsel in this action.
16 By making this payment, Defendant Gupta relinquishes all legal and equitable right,
17 title, and interest in such funds and no part of the funds shall be returned to Defendant
18 Gupta. The Commission shall send the funds paid pursuant to this Final Judgment to
19 the United States Treasury. Defendant Gupta shall pay post-judgment interest on any
20 delinquent amounts pursuant to 28 U.S.C. § 1961.

21 **IV.**

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the
23 Consent is incorporated herein with the same force and effect as if fully set forth
24 herein, and that Defendant Gupta shall comply with all of the undertakings and
25 agreements set forth therein.

26 **V.**

27 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for
28 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code,

1 11 U.S.C. § 523, the allegations in the complaint are true and admitted by Defendant
2 Gupta, and further, any debt for disgorgement, prejudgment interest, civil penalty or
3 other amounts due by Defendant Gupta under this Final Judgment or any other
4 judgment, order, consent order, decree or settlement agreement entered in connection
5 with this proceeding, is a debt for the violation by Defendant Gupta of the federal
6 securities laws or any regulation or order issued under such laws, as set forth in
7 Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

8 **VI.**

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court
10 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this
11 Final Judgment.

12 **VII.**

13 There being no just reason for delay, pursuant to Rule 54(b) of the Federal
14 Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith
15 and without further notice.

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18 Dated: October 11, 2017


UNITED STATES MAGISTRATE JUDGE